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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING

2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES

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9  
10 Ex parte GREG LINDEN

11  
12  
13 Appeal 2007-0702  
14 Application 09/538,679  
15 Technology Center 3600

16  
17  
18 Oral Hearing Held: December 19, 2007  
19  
20

21  
22 Before HUBERT LORIN, ANTON W. FETTING, JOSEPH A.

23 FISCHETTI, Administrative Patent Judges

24  
25 ON BEHALF OF THE APPELLANT:

26  
27 STEVE LAWRENCE, ESQUIRE  
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30 Seattle, WA 98111  
31

32  
33 The above-entitled matter came on for hearing on Wednesday, December  
34 19, 2007, commencing at 9:00 a.m, at The U.S. Patent and Trademark  
35 Office, 600 Dulany Street, Alexandria, Virginia, before Beverly J. Mahoney,  
36 Notary Public.

1 PROCEEDINGS  
2

3 JUDGE LORIN: Counsel, if I understand correctly, this is Appeal  
4Number 2007-0702; is that correct?

5 MR. LAWRENZ: Correct.

6 JUDGE LORIN: Counsel, can you speak up, please.

7 MR. LAWRENZ: Can you hear me better now?

8 JUDGE LORIN: Yes, we can hear you a bit better now.

9 We are familiar with the case. When you are ready, you have 20  
10minutes, and you may proceed.

11 MR. LAWRENZ: My name is Steve Lawrenz. I will be joined in a  
12moment by my associate, Michelle McCartney. We are very grateful for the  
13time and energy that this panel is expending on the appeal. And I want to  
14make sure that all members of the panel feel free to interrupt me at any time  
15they have questions.

16 The invention at hand has to do with an approach to identifying --  
17starting from a single purchasing opportunity, such as an auction for a unit  
18of an item, identifying similar purchasing opportunities.

19 And in some cases this extends to finding other purchasing  
20opportunities for other units of the same item, by which we mean two copies  
21of a single book, for example, or two sets of Archie and Jughead salt and  
22pepper shakers.

23 I would like to walk through the language of the claims, talk about the  
24merit, or lack thereof, of the rejections under Section 112, and also give you  
25our perspective on the rejection under Section 103.

26 Our argument and brief today focuses on the independent claims,

1claim 1 and claim 2. I will walk quickly through each of them.

2       Claim 1 is focused specifically at auctions. And the first step is  
3displaying information about a first auction, the information including a  
4description of the first item unit offered in the first auction.

5       Again, we understand the term "item unit" to mean a particular copy  
6of some product or other item for which more than one copy has been made,  
7like different copies of the same book.

8       Receiving user input, requesting information about other auctions  
9offering item units that are units of the same item as the first item unit, and  
10the user may wish to do this, for example, where they are seeking auction  
11where the bidding is at a lower level or the quality of a used item is more  
12closely attune to their desires.

13       They are determining for the description of the first item among  
14descriptions of item units offered in a group of auctions, including the first  
15auction, the inverse document frequency of terms occurring within the  
16description of the first item unit.

17       So that is for the terms and the description of the first item unit,  
18finding the inverse document frequency of that term in that document  
19relative to this larger group of descriptions of auctions in a group, selecting  
20--

21       THE COURT REPORTER: Excuse me, Your Honor.

22       JUDGE LORIN: Counsel, Counsel --

23       THE COURT REPORTER: Your Honor, we are not getting a record.

24       JUDGE LORIN: Excuse us. Counsel, Counsel, Counsel -- can you  
25hear me?

26       MR. LAWRENZ: Sir?

1 JUDGE LORIN: Could you slow down? We have a transcriber here  
2and she is trying her best to get this all down. Could you slow down in your  
3speech, please. We are having a problem understanding you.

4 MR. LAWRENZ: I certainly can. If you have other feedback to offer  
5along these lines as we proceed, please let me know.

6 Having calculated that inverse document frequencies for each of the  
7terms in the item description of the first item unit, the claim recites choosing  
8those terms that have the highest inverse document frequencies.

9 The next step is for each of those terms searching auctions in the  
10group whose description also contain that term. And the next step is having  
11items of those -- of the auctions in the group, whose descriptions contain the  
12term, for each of those, determining which of those terms are also present in  
13the found auctions item description.

14 And then the second-to-last step is identifying as an auction offering  
15an item unit that is a unit of the same item as the first item unit, so that's  
16picking one of these auctions and asserting that it's for a different unit of the  
17same item.

18 And on the found auctions when the soft of the inverse document  
19frequencies of the selected terms that occur in the items for that auction  
20exceed the threshold.

21 So we are signed by the terms in the found auction that match the  
22selected terms in the starting auction. And on the basis of determining that  
23they exceed some threshold, deciding that this is an auction for a different  
24unit of the same item. And then finally, displaying information about the  
25identified auction.

26 Did I raise any questions in my claim 1?

15

1 JUDGE LORIN: No questions.

2 MR. LAWRENZ: Let me move on to claim 2, because it's quite  
3similar, but it uses some slightly different language.

4 JUDGE LORIN: Counsel, Counsel -- Counsel, Counsel -- can you  
5hear me?

6 MR. LAWRENZ: -- purchasing opportunity for auction to encompass  
7purchasing opportunities --

8 JUDGE LORIN: Counsel, Counsel --

9 MR. LAWRENZ: -- rather than inverse document frequency, to the  
10extent to which occurrence of the term in the descriptive information  
11associated with the distinguished purchasing opportunity, differentiate the  
12distinguished purchasing opportunity from the other purchasing  
13opportunities.

14 So that's a characterization that would make these term scores quite  
15similar to the inverse document frequencies recited in claim one.

16 JUDGE LORIN: Counsel, Counsel --

17 MR. LAWRENZ: -- and it refers to the words in --

18 JUDGE LORIN: Counsel, Counsel -- Counsel, Counsel -- Counsel,  
19can you hear me?

20 MR. LAWRENZ: -- as key words, and again, they are selected on the  
21same basis of having the highest term scores. And the somewhat  
22significance --

23 THE COURT REPORTER: Excuse me, Your Honor, we can't go  
24forward like this. We are not getting a record.

25 JUDGE LORIN: Counsel, Counsel -- Counsel, can you hold on for a  
26second here. You are talking much too quickly. And we are finding that

1 when we try to interject here that you are unable to hear us.

2 MR. LAWRENZ: I think I am going to switch to a handset then to  
3 make sure that you have every opportunity to interact successfully. May I  
4 call you back immediately on the same number?

5 JUDGE LORIN: No. What's best is for you to stay on line, and speak  
6 clearly and slowly, and take a breath after a few sentences, and wait to hear  
7 if there is any response.

8 MR. LAWRENZ: Very well. I will do that. Thank you for the  
9 suggestion.

10 JUDGE LORIN: And another thing, I notice that you are talking a lot  
11 about the claim. I think it's better for you to go directly to the issue and  
12 speak to that.

13 MR. LAWRENZ: Thank you for the suggestion, and I will do just  
14 that.

15 The rejections in this case are under Section 112, second paragraph;  
16 Section 112, first paragraph; and Section 103. And I would like to address  
17 them in that order.

18 The rejection under Section 112, second paragraph, asserts that the  
19 language in claim 1, in the second-to-last element, a unit of the same item as  
20 the first item unit is indefinite.

21 And I think the position taken by the examiner is that items are  
22 singular, every item in the world is different, and that it's, I guess,  
23 nonsensical to characterize two different item units as being units of the  
24 same item.

25 We certainly don't share that view, and we think that the specification  
26 of the application is clear in its characterization of units of the same item as

1different copies of -- well, from the same design.

2 And the example we would give is the Archie and Jughead salt and  
3pepper shakers that are both the subject of the starting auction and one of the  
4found auctions in that example given in the specification.

5 So in our view, the meaning of this term is clear and would be clear to  
6one of ordinary skill and art. They would be able to apply this claim, and in  
7particular this language, to determine whether a particular accused method  
8was seeking to find two copies of the same thing, two units of the same item  
9or not.

10 Did I raise any questions there?

11 JUDGE LORIN: No, thank you, Counsel. You may go on.

12 MR. LAWRENZ: So the rejection under Section 112, first paragraph,  
13is particularly the rejection on the enablement requirement of the first  
14paragraph.

15 And my understanding of the basis for this rejection is that it's  
16impossible, because of the examiner's understanding of the term "same  
17item," it's -- we haven't shown how the claimed invention would find  
18different opportunities for what we regard as the same unit of the same item,  
19which is how the examiner is reading this claim.

20 As we have made fairly clear in our briefing and here today, we don't  
21share that understanding of the term. So we feel like in the details of the  
22specification, and indeed in, for example, just the content of claim 1 alone,  
23the steps necessary to find auctions, or in the case of -- well, the steps  
24necessary to find auctions that the system thinks are offering for sale.

25 Different units of the same item are present, and one skilled in the art  
26would be able to take the description and, quite straightforwardly, build an



1implementation that does accomplish that end.

2 Does the panel have any questions about that issue?

3 JUDGE LORIN: No, Counsel. Thank you.

4 MR. LAWRENZ: Now progressing to the 103 rejection. The  
5rejection, both claims 1 and 2 and the dependent claims, is formulated based  
6upon three references. And they are the Phillips reference, the Ishikawa  
7reference and the Sato reference.

8 Ishikawa and Sato are both directed to use of inverse document  
9frequency scores and contacts other than auctions and buying opportunities.  
10The Phillips reference is directed to an online catalogue system.

11 If you have the Phillips reference available, you will see that. It  
12makes up a description of a particular electronic part called a compander,  
13and it has a description and additional information about the product, linked  
14to the data sheet for the product, and such information.

15 It also has a link near the top that's labeled "find some more products,"  
16which apparently helps to jump to the last substantive section of this page  
17that's headed "find some more products by," and on to page 2, and continues  
18on page 3.

19 And it shows parts of -- apparently there is a large hierarchy of all the  
20products in the catalogue, so there are categories and subcategories and  
21subcategories. And it shows that this compander part occurs at two points in  
22this manufacturer's product hierarchy.

23 And you can kind of see two hierarchy structures. And the first one,  
24top level category is ICs, and the second one is audio/video/PC, and further  
25down you see the compander, SA571 compander, the one that's the subject  
26of this Web page.

1 And then if you flip to page 3, you see it down a different path  
2through the hierarchy, the compander SA571, in a different spot.

3 And it's the examiner's position that, number one, these -- as far as we  
4understand, that these two -- the links each labeled SA571 compander in this  
5hierarchy each constitute a buying opportunity or an auction for either a  
6different unit of the same item, in the case of claim 1, or a purchasing  
7opportunity for an item that had the description but whose terms have a high  
8idea of matching a score, as described in claim 2.

9 And that's not our perspective on this reference at all. There is no  
10mention in this reference that any of the items, any of these parts, can be  
11purchased at auction. It's not even necessarily clear that they are available  
12for purchase, although I think we can assume that they are because it says  
13this is an electronics component manufacturer.

14 But no purchasing information is available here. And if we assume  
15that someone would know to call a bill of sale agent in order to buy one of  
16these compander SA571s, at least relative to claim 1, they would be saying,  
17SA571 is what I want; send me one of those, please.

18 And it would have no relevance whether they had followed the first or  
19the second link in those hierarchies because, indeed, as far as we can  
20determine, the links only return you to this page again.

21 So it's hard to think of those links as different auctions because, again,  
22as far as we know, there are no auctions involved or different buying  
23opportunities.

24 Because, again, it seems like the only buying opportunity we can even  
25imagine, based on this reference, is calling up and saying, I want an SA571,  
26which is interesting with both of those links, not a particular one of them.

35

1 JUDGE FISCHETTI: Counsel, can I interrupt you for a quick second.

2 MR. LAWRENZ: Please do.

3 JUDGE FISCHETTI: My question to you is, what in the  
4 methodology of claim 1 is particularly tailored to the search of an auction  
5 versus the search of a product in general, such as shown by compander?

6 MR. LAWRENZ: I think, to be fair, the only part of claim 1 that  
7 reads out the non-auction aspect of the Phillips reference is the specific  
8 recitation of an auction.

9 I don't think -- there is nothing, besides specifically reciting auction, I  
10 don't believe there are any other features in claim 1 that would tend to  
11 require an auction.

12 Was there some followup that you saw in that direction?

13 JUDGE FISCHETTI: No. I understand. Thank you.

14 MR. LAWRENZ: Sure.

15 JUDGE FETTING: I have a question, Counsel.

16 MR. LAWRENZ: Absolutely.

17 JUDGE FETTING: Is it your contention that one of ordinary skill  
18 would not have thought to use a search engine to find the products from the  
19 Phillips website?

20 MR. LAWRENZ: I find in Phillips -- no, I don't have any reason to  
21 believe that one of ordinary skill would have known to do that, because I  
22 think Phillips had this conception of finding similar products, where they  
23 have this link, and it had the section.

24 And it seems like there are two ways to read what they intended by  
25 similar price. One is on the same product again, which doesn't really make  
26 much sense.

1 But I think my understanding of how they intended these hierarchies  
2to be used is that people would start traversing up toward the root of the  
3hierarchy.

4 So if you look at the first hierarchy and start at the SA571 compander  
5and go up to the two companders, I think that the intended use of this part of  
6the page is that they might try clicking there and seeing a list of the two  
7companders that would include one compander other than SA571.

8 And then they would be exploring for -- and then they would be  
9exploring for units of an item that was different but similar presumably.

10 And it seems like they have got this methodology of the hierarchy,  
11their hierarchy is really rigorous, and that it even includes an item at  
12multiple points that it might occur.

13 And I am not sure that one of ordinary skill and art wouldn't have  
14been satisfied that this -- that to the extent that the Phillips reference raises  
15this requirement of being able to find units of similar items, that this  
16hierarchy isn't completely sufficient. I think that's a long way of saying no.

17 JUDGE FETTING: I guess I am approaching it from a question of, if  
18I am somebody who happens to need a compander, whatever that is, why  
19wouldn't I just have gone to Yahoo, which I believe existed prior to your  
20filing date, and simply put in the word "comander" into its search engine to  
21see whoever, including Phillips, might have them?

22 And let it come back with everybody's, including all of these products  
23and packages that are listed on page 2.

24 MR. LAWRENZ: I don't think that that -- our filing date was 2000 --  
25I think it's reasonable to believe that someone may have done that.

26 But is your contention that that approach to it is consistent -- would

1infringe on either of the independent claims?

2 Because you haven't started with the entire description of a product, or  
3an item, which is the claim, from a single auction or a single buying  
4opportunity, and mapped from there to a different auction or different  
5buying opportunity. You started without an auction or a buying opportunity  
6in just the key word that you mentioned.

7 JUDGE FETTING: Well, claim 2 just says, For terms occurring in  
8descriptive association --

9 MR. LAWRENZ: Did you have any reaction to that response?

10 JUDGE FETTING: Yes. I'm saying there is no necessity that the  
11purchasing opportunity necessarily has to have a Web page or anything, it  
12just has to be a purchasing opportunity. I mean, if I want to buy something,  
13that's certainly a purchasing opportunity.

14 MR. LAWRENZ: But the claim -- at least claim 1 does require -- so  
15you are using the purchasing opportunity language, so I think you are talking  
16about claim 2.

17 JUDGE FETTING: Right.

18 MR. LAWRENZ: So your position is that the language recited in  
19claim 2, the description of information associated with the distinguished  
20purchasing opportunity is just a set of key words that you had generated?

21 JUDGE FETTING: Right.

22 MR. LAWRENZ: I guess I would push back a little bit here and say  
23that in the framework established by the specification, a purchasing  
24opportunity is a chance to buy a particular item from a particular party under  
25particular terms.

26 And that your desire for the product, however particularized it might

1be, doesn't have all of those elements.

2 JUDGE FETTING: You want me to read the specification in claim 2?

3 MR. LAWRENZ: Well, in the case law there is a lot of different  
4language to use, and that's between reading the specification and/or using the  
5understanding of the terms used -- using the understanding provided by the  
6specification of the terms used in the claim to read the claim, yes.

7 JUDGE FETTING: Okay.

8 MR. LAWRENZ: Certainly, for claim 1, your desire for the product  
9doesn't strike me as a first auction in the language that's recited there.

10 JUDGE LORIN: Counsel, you may want to wrap it up.

11 MR. LAWRENZ: Ms. McCartney and I, and the assignee, are very  
12grateful for your work on this appeal. Thank you very much for your time  
13today.

14 JUDGE LORIN: Thank you, Counsel. We will take your comments  
15under advisement.

16 MR. LAWRENZ: Thank you.

17 (Whereupon, the proceedings at 9:25 a.m. were concluded.)